

Administration (SSA) age-related retirement benefits for the period November 1, 2012 through November 9, 2019, without an appropriate offset; and (2) whether it properly denied waiver of recovery of the overpayment; (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On May 14, 2009 appellant, then a 62-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she was involved in a motor vehicle accident on April 28, 2009 and sustained multiple injuries while in the performance of duty. OWCP initially accepted her claim for contusion of the right upper arm and sprain of the left wrist. It subsequently expanded the acceptance of appellant's claim to include sprain of the right knee and leg, sprain of the right shoulder, upper arm and rotator cuff, tear of the medial meniscus of the right knee, osteoarthritis of the lower right leg, primary osteoarthritis of the bilateral lower leg, and articular bearing surface wear of the right prosthetic joint. Appellant stopped work on April 29, 2009. OWCP paid her compensation on the periodic rolls effective August 18, 2010.

On February 16, 2019 the employing establishment advised OWCP that appellant was covered under the Federal Employees Retirement System (FERS) and was entitled to receive both SSA age-related retirement benefits and FECA compensation benefits. It requested that OWCP review her file to determine if it qualifies for the FERS offset and subsequent reduction of compensation benefits.

On March 26, 2019 OWCP requested information from SSA regarding appellant's potential dual benefits.

OWCP received a completed FERS/SSA dual benefits calculation form from SSA dated April 24, 2019. SSA listed appellant's SSA age-related retirement benefit rates with and without a FERS, for the period November 2012 through December 2018. Beginning November 2012, the SSA rate with FERS was \$1,575.90 and without FERS was \$835.30. Beginning December 2012, the SSA rate with FERS was \$1,602.60 and without FERS was \$849.50. Beginning December 2013, the SSA rate with FERS was \$1,626.60 and without FERS was \$862.20. Beginning December 2014, the SSA rate with FERS was \$1,654.20 and without FERS was \$876.80. Beginning December 2015, the SSA rate with FERS was \$1,654.20 and without FERS was \$876.80. Beginning December 2016, the SSA rate with FERS was \$1,659.10 and without FERS was \$879.40. Beginning December 2017, the SSA rate with FERS was \$1,962.20 and without FERS was \$896.90. Beginning December 2018, the SSA rate with FERS was \$1,739.50 and without FERS was \$922.00.

On November 20, 2019 OWCP prepared a FERS offset calculation worksheet wherein it computed a total overpayment in the amount of \$64,894.49 for the period November 1, 2012 through November 9, 2019. This form detailed that: from November 1 through 30, 2012 appellant received an overpayment in the amount of \$732.46; from December 1, 2012 through November 30, 2013 she received an overpayment in the amount of \$9,062.03; from December 1, 2013 through November 30, 2014 she received an overpayment in the amount of \$9,198.00; from December 1, 2014 through November 30, 2015 she received an overpayment in the amount of \$9,354.43; from December 1, 2015 through May 28, 2016 she received an overpayment in the

amount of \$4,614.33; and from November 13 through 30, 2016 she received an overpayment in the amount of \$461.43; from December 1, 2016 through November 30, 2017 she received an overpayment in the amount of \$9,382.10; from December 1, 2017 through November 30, 2018 she received an overpayment in the amount of \$12,818.72; and from December 1, 2018 through November 9, 2019 she received an overpayment in the amount of \$9,270.99.

OWCP provided another FERS offset calculation worksheet dated November 20, 2019, which was identical to the prior November 20, 2019 worksheet, but noted an SSA rate with FERS from December 1, 2017 of \$1,692.20 and without FERS \$896.90 and found that from December 1, 2017 through November 30, 2018 appellant received an overpayment in the amount of \$9,569.82. OWCP advised that she received a schedule award from May 29 to November 12, 2016. The total overpayment calculated was \$61,645.59.

In a letter dated November 20, 2019, OWCP informed appellant that it had determined that she had been receiving SSA age-related retirement benefits since November 1, 2012. It explained that SSA confirmed that a portion of her SSA age-related retirement benefits were attributable to her federal service as an employee covered under FERS. OWCP explained that the portion of appellant's SSA age-related retirement benefits attributed to her federal service required an offset of her FECA compensation per applicable federal regulations. It explained how her offset would occur going forward with her payment dated December 1, 2019.

On February 10, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$64,894.49 had been created because appellant received SSA age-related retirement benefits from November 1, 2012 through November 9, 2019 that were partially based on credits earned while working in the Federal Government, and that this portion of his SSA benefit was a prohibited dual benefit. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records to support income and expenses. Additionally, OWCP provided an overpayment action request form and further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

On February 10, 2020 appellant completed an overpayment action request form and requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She indicated that she was requesting waiver of recovery of overpayment because she was found to be without fault and had no knowledge that she was being overpaid.

On a Form OWCP-20 completed on February 10, 2020 appellant reported that her total monthly income was \$1,767.00 from SSA benefits. She reported expenses totaling \$3,829.00. Appellant indicated monthly expenses of \$1,840.00 for rent, \$400.00 for food, \$250.00 for clothing, \$480.00 for utilities, and \$719.00 for other expenses. She also noted a monthly payment of \$140.00 for various credit card payments. Appellant further noted cash on hand of \$40.00, a

checking account balance of \$69.00, and a savings account balance of \$1,838.00. She submitted supporting financial documentation.

In a May 5, 2020 notice, OWCP's hearing representative informed appellant that her prerecoumpment hearing was scheduled for June 9, 2020 at 10:30 a.m. Eastern Standard Time (EST). Appellant did not attend the prerecoumpment hearing. Her request was converted to a review of the written record.

In a statement dated June 18, 2020, appellant requested that no further deductions be taken from her compensation and for the original payments to resume because it has affected her overall standard of living. She asserted that SSA did not do their part with handling the paperwork and she did not want to be penalized.

By decision dated July 6, 2020, OWCP's hearing representative affirmed the preliminary overpayment determination, which found that appellant had received an overpayment of compensation in the amount of \$64,894.49 for the period November 1, 2012 through November 9, 2019 because it failed to offset her compensation payments by the portion of her SSA age-related retirement benefits that were attributable to her federal service. However, he also found that the "correctly" calculated overpayment amount was \$61,645.59. OWCP's hearing representative determined that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. He found that the overpayment would be recovered by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefits earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period November 1, 2012 through November 9, 2019, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits.

OWCP paid appellant wage-loss compensation for total disability on the periodic rolls effective August 18, 2010. Beginning November 1, 2012, appellant received SSA age-related retirement benefits. As noted, a claimant cannot concurrently receive wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. As OWCP neglected to offset her FECA benefits for the period November 1, 2012 through November 9, 2019, she received an overpayment of wage-loss compensation.⁸ Therefore, fact of overpayment is established.⁹

The Board further finds that this case is not in posture for decision regarding the amount of the overpayment.

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA benefits that were attributable to appellant's federal service. SSA provided her SSA rate with FERS and without FERS beginning November 1, 2012. After calculating the amount that it should have offset for each relevant period based on the November 20, 2019 SSA worksheet and adding these amounts together, OWCP concluded that appellant had received an overpayment of \$64,894.49. In another FERS offset calculation form also dated November 20, 2019, OWCP noted a "corrected" SSA rate from December 1, 2017 with FERS of \$1,692.20 and without FERS of \$896.90. The total overpayment calculated with the corrected SSA rate for December 1, 2017 was \$61,645.59. However, without explanation, OWCP then found in the preliminary overpayment determination, that the amount of the overpayment was \$64,894.49. OWCP's hearing representative affirmed the preliminary overpayment determination, which found that appellant had received an overpayment of compensation in the amount of \$64,894.49. However, he also found that the "correctly" calculated overpayment amount was \$61,645.59. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.¹⁰ The Board will, therefore, remand the case for OWCP to further explain its calculation of the amount of the overpayment.

On remand OWCP shall determine the exact amount of the overpayment of compensation. It shall then issue a new preliminary overpayment determination, with an overpayment action request form, an overpayment recovery questionnaire, and instructions for appellant to provide

⁷ A.C., Docket No. 18-1550 (issued February 21, 2019).

⁸ *Id.*

⁹ *See K.H.*, Docket No. 18-0171 (issued August 2, 2018).

¹⁰ *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

supporting financial information.¹¹ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that appellant received an overpayment of compensation from November 1, 2012 through November 9, 2019 for which she was without fault, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 14, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ See *L.K.*, Docket No. 29-0416 (issued November 12, 2020).

¹² In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.